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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

REPLY COMMENTS OF PALM BEACH COUNTY, FLORIDA

Palm Beach County, Florida, by and through undersigned counsel, hereby submits these reply comments in response to comments filed in the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking in the above-captioned proceeding. Palm Beach County filed comments objecting to the proposed rule, on the basis that the Commission should not preempt state and local government regulations for the purpose of expediting the construction of broadcast transmission facilities for digital television ("DTV").

1. The FCC Lacks Jurisdiction to Preempt State and Local Regulations.

Palm Beach County concurs with the comments filed by The National League of Cities and the National Association of Telecommunications Officers and Advisors ("collectively, "NLC"). The County, specifically, agrees with NLC's points regarding the lack of jurisdiction by the FCC to preempt, without any rational basis, all local regulations regarding planning, zoning and building as related to broadcast towers. The petitioners in the captioned proceeding, The National Association of Broadcasters and The Association for Maximum Service Television (collectively, "NAB"), fail to even summarily address in their comments the issue of the jurisdiction of the FCC

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to make such a rule. The threshold issue is, instead, relegated to a footnote, in which the petitioner states that “[t]he [FCC] correctly concludes that it has jurisdiction to preempt local zoning and land use regulations” (NAB comments, p. 3) To the contrary, neither the petitioner nor the FCC have demonstrated the legal basis for the FCC’s ability to adopt such wide-scale preemption of local and state regulations.

2. Broadcast Facilities Should Comply With Local Regulations and Not Be Afforded a Differing Review Process.

Palm Beach County disagrees with NAB’s argument that the proposed rule is necessary due to the “extraordinary length of time that is sometimes required to navigate state and local procedural hurdles and to obtain a decision on a particular application.” (NAB comments, p. 4) Although the review process, which NAB views as a “procedural hurdle”, may be lengthy, it is necessary for the protection of the public health, safety and welfare and, in some instances, mandated by state law. All other industries or businesses wishing to develop property in Palm Beach County must likewise navigate the “procedural hurdle” which is in place. The implementation of DTV should not be afforded priority in processing, review and approval, when such a priority is not afforded other uses. Facilities other than television towers, such as hospitals, schools and airports, must comply with regulations and undergo these “procedural hurdles.” The construction of a broadcast tower should not be afforded the luxury of a 21 to 45 day time frame for County response, or deemed approved, when other facilities, serving a greater public purpose, are not entitled to a preemption of local regulation or an accelerated review process.

3. The Preemption in the Proposed Rule is Overly Broad

NAB notes that the conversion to DTV will cause “ripple effects”, as it will cause the relocation of FM antennas. (NAB Comments, p. 8) NAB asks that the preemption apply to all

broadcast facilities, not just DTV, so that NAB will not have to prove or demonstrate that any particular project is DTV-related. (NAB comments, p. 8) If the argument for preemption is based on the FCC's direction that DTV is of prime importance and necessitates preemption of local regulation, what is the rationale for the preemption as regards to FM antennas? There is no reason why local regulations should be preempted for FM antennas. If the FCC has the authority to preempt local regulation (which it does not), the preemption should not be extended to FM antennas. Indeed NAB has requested the rule, not for DTV build-out, but for "all broadcasters, whether they are implementing DTV or not." (NAB comments, p. 9) NAB is using the DTV build out as an opportunity to avoid all local regulations which serve to add expense to the installation of broadcast towers.

The preemption should not apply, if at all, to any markets except for the markets with the earliest implementation deadline. Broadcast companies have more than ample opportunity to comply with local regulations for those markets with later implementation deadlines. The broadcast companies are, as any business or enterprise, on notice as to the deadlines imposed by the FCC. The companies can either lobby the FCC to extend or revise the deadlines, or begin the necessary approval processes to meet those deadlines. Local governments are not responsible for any delay caused if broadcast companies choose to delay implantation or, as NAB has indicated, have difficulty in finding "trained construction crews" (NAB comments, p. 11).

4. The Proposed Rule Would Endanger Air Operations and Aircraft.

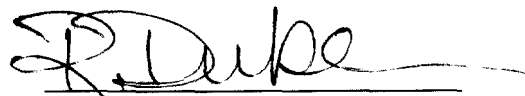
The proposed rule does not take into consideration Federal Aviation Administration ("FAA") jurisdiction or review requirements for structures located near airports which may interfere with, or endanger, aircraft or air operations. Any FAA review process is required pursuant to federal law,

and the proposed rule places local government in the position of reviewing and perhaps approving a project which may subsequently be found to be in violation of FAA regulations or restrictions. Palm Beach County objects to the proposed rule on the basis that it may interfere with public safety at the County's airports and endorses the comments filed in this proceeding by the Airports Council International - North America, the National Association of State Aviation Officials, the American Association of Airport Executives, the National Business Aviation Association and the Helicopter Association International.

CONCLUSION

For the reasons set forth herein and in comments previously filed in this proceeding, Palm Beach County requests that the Commission decline to adopt the proposed rule.

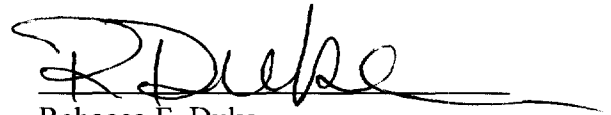
Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Duke", with a horizontal line underneath it.

Rebecca F. Duke
Assistant County Attorney
Florida Bar No. 872237
Palm Beach County Attorney's Office
301 North Olive Avenue
Suite 601
West Palm Beach, Florida 33401

CERTIFICATE OF SERVICE

I hereby certify that the original and nine true and correct copies of the foregoing and computer disk has been furnished by Federal Express this 20th day of November, 1997, to the Secretary, Federal Communications Commission, Washington D.C. 20554.



Rebecca F. Duke
Assistant County Attorney
Palm Beach County
Florida Bar No. 872237

cc: Susanna Zuerling, Policy & Rules Division, Mass Media Bureau, FCC
Burt Aaronson, Chairman and Members, Board of County Commissioners
Robert Weisman, County Administrator
Denise Dytrych, County Attorney
Gordon Selfridge, Chief Deputy County Attorney
Robert Banks, Assistant County Attorney
Denise Cote', Director Public Affairs